BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF OLSEN BROTHERS DRYWALL & PAINTING, INC., and KAISER ALUMINUM & CHEMICAL CO., Appellants, v. PUGET SOUND AIR POLLUTION CONTROL AGENCY, Respondent.	PCHB Nos. 80-208, 80-209 & 80-214 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the appeal from the issuance of two $250 civil penalties for the alleged violations of section 9.15 of respondent's Regulation I, came before the Pollution Control Hearings Board, Nat Washington, Chairman, and David Akana (presiding) at a formal hearing in Tacoma on February 5, 1981.

Respondent was represented by its attorney, Keith D. McGoffin; appellant Olsen Brothers Drywall & Painting, Inc., (Olsen) and Kaiser Aluminum & Chemical Corporation (Kaiser) was represented by their attorney, Robert A. Bohrer.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

FINDINGS OF FACT

I

On August 25, 1980, at about 1:16 p.m., while on routine patrol, respondent's inspector observed an intermittent white plume from a spray paint operation on Kaiser's premises located at 3400 Taylor Way in Tacoma. The inspector could see spray visible in the air for 10 to 15 feet from a railroad car being painted in the open. No shrouds or other equipment was seen at the work site. The inspector later learned that appellant Olsen's employees were performing the work on appellant Kaiser's railroad cars. Before leaving the site, the inspector notified Kaiser of his observations. A notice of violation of section 9.15 was sent to each appellant from which followed a $250 civil penalty (No. 4870).

II

On September 17, 1980, at about 2:45 p.m., while on routine inspection, respondent's inspector saw a variable, light tan plume in the air coming from an abrasive blasting operation on appellant Kaiser's property at 3400 Taylor Way in Tacoma. Appellant Olsen's employees were cleaning certain steel portions on the underside portion of a railroad car in the open. The inspector could not see shrouds or any other equipment at the site. A notice of violation of section 9.15 was sent to each appellant from which followed a $250 civil penalty (No. 4889).

III

Appellant Kaiser contracted with appellant Olsen to clean and paint a number of railroad cars. Kaiser did not perform any part of the work contracted, nor did it control the manner in which work was performed. Olsen performed as an independent contractor.

IV

Respondent has published a guideline for abrasive blasting in 1974[1] outlining methods to minimize the chances of causing violations of Regulation I. The guidelines purports to allow "uncontrolled abrasive blasting" in the open for surface cleaning using approved abrasives. The guideline cautions that adequate tarping may be needed to prevent airborne nuisance or other violations of Regulation I.

V

On September 17, appellant Olsen used an approved abrasive material in the open to surface clean a small area of the steel portion of a railroad car. Appellant's action complied with the guideline unless tarping was required. The small amount of particulate matter emitted from cleaning 100 square feet of steel surface on a car, coupled with the short time of duration of the emission, was not shown to be a nuisance or other violation of Regulation I. Tarping or shrouding at this place, and in this instance, was not required.

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1. Respondent asserts that the publication is outdated.

VI

On August 25, appellant Olsen used a coating material which chemically dried, rather than air dried. This material was applied to the railroad car by experienced employees using airless sprayers. These sprayers minimize the incidence of overspraying as compared to an air sprayer. Although there was an emission into the atmosphere, the amount emitted using the method employed does not appear to be substantial so as to require enclosure of the railroad car.

VII

Pursuant to RCW 43.21B.260, respondent has filed with the Board a certified copy of its Regulation I and II which are noticed.

Section 9.15(a) makes it unlawful for any person to cause or permit particulate matter (here paint and dust) to be handled, transported or stored without taking reasonable precautions to prevent particulate matter from becoming airborne.

Section 3.29 provides for a civil penalty of up to $250 per day for each violation of Regulation I.

VIII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

Appellant Kaiser was not shown to have violated section 9.15 of Regulation I as alleged and the two $250 civil penalties should be stricken insofar as they apply to Kaiser.

II

Respondent establishes a prima facie case under section 9.15(a) when it shows that a person has caused particulate matter to become airborne. Respondent made such a showing for the events occuring on August 25, and September 17. The burden of presenting evidence then shifts to appellant to show that reasonable precautions were taken. Appellant Olsen's evidence, while not conclusive, was sufficient in this instance and under the facts of this case to show that reasonable precautions were taken. Accordingly, there were no violations of section 9.15(a) as alleged and the civil penalties (Nos. 4870 and 4889) should be vacated.

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enters this

ORDER

Civil penalties Nos. 4870 and 4889 assessed on Kaiser Aluminum & Chemical Corporation and Olsen Brothers Drywall & Painting, Inc., are each vacated.

DONE at Lacey, Washington, this 17th day of February, 1981.

POLLUTION CONTROL HEARINGS BOARD

NAT W. WASHINGTON, Chairman

DAVID AKANA, Member